

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2007-0327, Appeal of Rochester Tire & Automotive, the court on January 22, 2008, issued the following order:**

The respondent, Rochester Tire & Automotive, appeals a decision of the hearings examiner for the petitioner, the New Hampshire Department of Safety, Division of Motor Vehicles, Bureau of Hearings, finding that the respondent failed to comply with a prior order of the petitioner and fining the respondent \$2,000. We affirm.

The respondent has the burden to show that the hearings examiner's decision was clearly unreasonable or unlawful. Appeal of N.H. Fireworks, 151 N.H. 335, 338 (2004). We will not vacate or reverse an agency order or decision except for errors of law, unless we are satisfied, by a clear preponderance of the evidence before us, that such order is unjust or unreasonable. Appeal of State of N.H., 144 N.H. 85, 88 (1999); see RSA 541:13 (2007). The hearing examiner's findings of fact are deemed lawful and reasonable. Appeal of N.H. Fireworks, 151 N.H. at 338.

The respondent first argues that the hearing notice for the March 26, 2007 hearing incorrectly cited as legal authority for the hearing New Hampshire Administrative Rules, Saf-C 2347.04 (expired June 22, 2006; readopted and renumbered June 22, 2007, as N.H. Admin. Rules, Saf-C 2348.04). He does not explain in his brief, which consists of his notice of appeal and supporting documents, how this incorrect cite rendered the hearing examiner's order unjust or unreasonable. Accordingly, we conclude that the respondent has failed to develop this argument sufficiently for our review. See Boynton v. Figueroa, 154 N.H. 592, 607 (2006).

The respondent next asserts that the hearing examiner violated RSA 266:1, XI(a) (2004) by imposing a suspension and a fine in the same proceeding. The record does not support the respondent's assertion. In the order at issue, the hearing examiner imposed a \$2,000 fine and merely noted that a suspension that had been imposed in a prior proceeding was still in effect. We conclude that this order does not violate RSA 266:1, XI(a).

Finally, the respondent contends that the amount of the fine was erroneous absent evidence that the respondent had engaged in five or more violations. See RSA 266:1, XI(a)(5). As the moving party in this appeal brought pursuant to RSA chapter 541 (2007), the respondent was required initially to

bear the full, reasonable cost of preparing the transcript for inclusion within the record. Appeal of City of Manchester, 149 N.H. 283, 290 (1999). Also, as the appealing party, the respondent was required to provide the court with a record sufficient to review the respondent's issues on appeal. See Rix v. Kinderworks Corp., 136 N.H. 548, 553 (1992); see also Sup. Ct. R. 13. Absent a transcript of the hearing before the hearings examiner, we must assume that the evidence was sufficient to support his decision to impose a \$2,000 fine. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004).

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**